

## BOOK REVIEWS

*The Law of Real Property.* By Raleigh Colston Minor, Professor of Law in the University of Virginia, and John Wurts, Professor of Law in Yale University.

How often one hears a law student say: "I know nothing about 'real property'; it is all confused." The same thought is frequently confessed by members of the bar; and more often unconfessed. Can this too common lack of knowledge in this important branch of the law be wholly attributed to the shortcomings of the student? Assuredly not. The cause lies elsewhere.

The subject of real property, besides being the most difficult, has been in nearly every instance heretofore presented in text-book form, which defies more than the weakest grasp to the student who is obliged to confine his preparatory period for nearly all the branches of the law to three years. Knowing little about real property upon finishing his course, he soon knows less.

And yet numerous able treatises have been written on real property. No other branch of the law has received closer attention from men of brains. But the common fault of the productions of these men has been treatises—not text-books.

A treatise may be a text-book; if so, the student is fortunate. But all treatises are not text-books. Treatises on the law of real property are not text-books. Unfortunately, however, it has been the lot of most law students to have the former served up to them as the latter. The student has been shown the common law rules, the natural changes in the law in this country, the English statutory modifications and the various modifications in the several States, the latter often being nearly as numerous as the States themselves. What is the result? The student says with less shame than regret, "I know nothing about 'real property'; it is all confused."

But the situation is, we think, relieved. In the book of Professor Minor and Professor Wurts, the student's need is recognized and satisfied. The work has for its foundation the most

able treatise upon the law of real property by Professor Minor. In the hands of Professor Wurts this scholarly treatise has assumed a real text-book form, written expressly for law students. In his capacity as a teacher, the author has recognized that it is neither possible nor desirable to undertake to teach the changes in the law of real property that have been made in all the States. What the law is in a particular jurisdiction can better be taught from a book treating the general law of real property, supplemented by the local statutes, than from a book which attempts to show what the law is in every State, a method which not only tends to confusion but throws an intolerable burden upon the instructor, if he is unwise enough to pursue in his lectures the many ramifications worked by the statutes of the several States.

The apparent purpose of this book is to state the common law of real property, showing wherein it has been modified in this country, as contrary to the fundamental laws and the spirit of our institutions, and to set out only such statutory changes as are common to all the States.

It was the present writer's good fortune to study the law of real property under Professor Wurts. The lucidity with which he explained the deeper problems of law and the ease with which he smoothed out the difficulties arising from the study of books none too illuminating are easily recognizable in the present work.

The authors' complete grasp of the subject, their thoroughness of analysis, their powers of demonstration, and the care with which they have avoided ambiguous statements make the book, we believe, the cleanest cut exposition of the common law of real property that has been produced in this country. *A. M. C.*

*The Civil Code of the German Empire.* Translated by Walter Loewy. Boston Book Co. 1909.

This is the second translation of the *Bürgerliche Gesetzbuch* of 1900 into English. In several particulars it differs from the first, by Dr. Chung Hui Wang, which was published in London in 1907. Unlike that, it is accompanied by an historical sketch of the development of codification in Germany, and explanations of the relation of the new code to the pre-existent customary law; both useful adjuncts. It lacks, on the other hand, the two val-

uable glossaries given by Dr. Wang; one containing those German technical terms which are expressly defined by the code itself, and the other such English technical terms as the translator has used to express German legal conceptions, with appropriate notes and references.

In comparing the work of the two translators, Dr. Loewy's is in many respects better adapted to the demands of the practicing lawyer, and Dr. Wang's to those of the scientific jurist. Often, however, the Chinese author seems to have chosen his terms more judiciously than the American. This may be illustrated by their modes of treating Art. 7.

Original text—*Wer sich an einem Orte ständig niederlässt, begründet an diesem Orte seinen Wohnsitz.*

Wang's translation—A person who resides habitually in a place establishes his domicile in that place.

Loewy's translation—Persons who settle permanently at a given place, establish a residence at that place.

Here *ständig* is more closely rendered by Loewy; and so is *sich niederlässt*; but *Wohnsitz* is more effectively translated by Wang. To make it mean "residence" instead of "domicil" is to weaken its force and ignore a vital distinction, scientifically justifiable, between one's home and the place of a temporary sojourn. Indeed, Dr. Loewy assigns it the meaning of "domicil" in translating Art. 8 of the Law of Introduction, where it is contrasted with "*Aufenthalt*" or residence.

On the other hand, he translates, in Art. 1631, the provision that it is a father's right "*seinen Aufenthalt zu bestimmen*" for his minor child, as securing his right to "designate its domicile." It would seem to be rather the law itself, which identifies the domicile of the minor child with that of the father; while the code allows the father to send the child, from time to time, to reside where he will. Wang's translation here is better: "to determine his place of residence."

A further example of the different points of view of the two authors is their translations of *Rechtsgeschäft*. Loewy generally renders it by "transaction" Wang by "juristic act." In Art. 182 however, and the two following ones, Loewy uses the phrase "transaction in law."

This is not the only instance of his giving, with no apparent reason, different translations in different places of the same phrase. Thus, that, as to the interpretation of contracts, as good faith demands, "*mit Rücksicht auf die Verkehrsitte*," is rendered in Art. 157, "with due regard to commercial usage," and, less happily, in Art. 242, "with regard to custom."

Loewy's work has the advantage, for one acquainted with the German language, of giving often after the English rendering of a technical term, the German word itself. Occasionally this seems overdone. Thus, in Art. 158 we find: "If a transaction is entered into under a condition subsequent (*auflösende Bedingung*)."  
As the German words (*unter einer auflösenden Bedingung*) are simple and can have, as thus used, but one meaning, why quote them?

Dr. Loewy's English is not always smooth. Thus, in Art. 971, he renders "*Der Finder kann einen Finderlohn verlangen*" thus: "The finder may demand finder's reward." That the dropping of the article is intentional is shown from the fact that the subject of the next sentence, "*Der Finderlohn*," is translated again, "Finder's reward."

So in treating of pledges, he renders "*belasted*" (Art. 1204) as "burdened," when "charged" (as in Wang's translation) is much more idiomatic.

The general style of Dr. Loewy's work would indicate that he is better acquainted with German than with English, while Wang, to whom each is a foreign tongue, received his legal education mainly in English, and is quite at home in English terminology.

Loewy is inclined to too rigid a literalism. Thus, he renders Art. 599 as "The lender is liable only for design" (*Vorsatz*) "and gross carelessness," while Wang renders it, "The lender is responsible only for wilful default and gross negligence."

Occasionally, but very rarely, the legal meaning of a German term seems essentially misconceived. Thus the phrase "*nach dem Leben trachtet*," in Art. 2333, Dr. Loewy translates "compasses the death" of the testator. As the popular meaning of "to compass," namely, "to attain," evidently would not harmonize with the context, its secondary and legal meaning "to plot" must be

intended. But the German term, taken in its natural sense, means more, namely, "to attempt the life" of the testator, and so Dr. Wang has properly translated them.

As a whole, this new translation cannot fail to be of substantial use to the American bar, few of whom have ever seen, or would ever see, that of Dr. Wang. The Bar Association of Pennsylvania and the Law School of the University of Pennsylvania are entitled to great credit for their aid in the preparation and publication of the volume, which owes much to them in the way of annotations and cross references. No one who takes it up seriously can fail to get a clearer view of the possibilities of codification in the United States, and also of points of difference between American and German law in which the advantage is not always on our side.

S. E. B.

*Law Office and Court Procedure.* By Gleason L. Archer, LL.B.,  
Dean of the Suffolk School of Law, Boston. Little, Brown &  
Co. (1910). pp. 311.

Any young attorney into whose hands falls *Law Office and Court Procedure* will have found a good friend. This work will prove a friend indeed, for those who can and will give advice to the beginner should be doubly blessed. Yet that is the type of book placed before the novice by Dean Archer. No doubt his position and relationship with law students gave him his idea of the necessities of just such a work as he has written for the beginner. That he has done his work well all who read his book will bear witness. To say that there is a large field for such a book is to give expression to the commonest of platitudes.

The fact that most young lawyers to-day get their theoretical knowledge in law schools and forego practical knowledge until they begin practice, makes a volume like the above absolutely essential. At the same time the practicing lawyer can get much sound advice and a general clarification of ideas by a close, yet pleasant perusal of this volume.

The book proper is divided into four general parts. Part One is devoted to the necessary proceedings preliminary to drawing the writ, and touches upon the confirmation of the client's story, notice to the adverse party, the choice of courts, choosing a form

of action, officers qualified to serve the process and other preliminaries to suit. Part Two covers the period from the drawing of the writ to marking the case for trial. Under this head is treated entry of suit, motions, amendments, defaults, etc. Part Three concerns the trial of the case. The preliminaries of trial, with excellent examples illustrative of direct and cross-examination carefully selected from actual stenographic records of trials are presented to the reader in an intelligent way, with helpful notes appended. Part Four deals with proceedings after the trial. There is an appendix which contains a short, complete trial.

The book is written in a straightforward, clear manner, with topics not unduly prolonged. One reads it with as much pleasure as one would read a fascinating novel. The author goes into specific examples and does not leave the novice wandering about in a bog of generalities. For this reason the book will prove to be a great help. There is also a wholesome lack of esoteric learning displayed, and practicability is strongly stamped upon every page. One may pick up the volume with a pleasant expectancy before him and have no fear that he is undertaking a book which will produce a feeling of having undergone a period of depression. The work cannot be too strongly recommended for the purpose for which it was written. It should be read by every lawyer before he gets his first case.

*S. B. L.*